

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Case No.: 3:24-cv-00149-ART-CSD

**Order**

Re: ECF No. 5

CAMERON CHURCH,

Plaintiff

v.

MATT BURNS, et al.,

Defendants

Plaintiff has filed an amended complaint, which the court screens pursuant to 28 U.S.C. § 1915(e).

**I. BACKGROUND**

The undersigned issued a report and recommendation to grant Plaintiff's application to proceed in forma pauperis (IFP) and screened Plaintiff's complaint. It was recommended that Plaintiff be permitted to proceed with the following: claims under the Fair Labor Standards Act (FLSA) based on the alleged failure to pay overtime and retaliation; claims for violation of Nevada Revised Statute (NRS) Chapter 608 for the alleged failure to pay overtime, failure to pay wages and commissions due and owing; and state claims for breach of contract, and fraudulent and negligent misrepresentation.

It was recommended that the following claims be dismissed with prejudice: the FLSA claim for failure to keep accurate records; the NRS Chapter 608 meal and rest break claims as well as Chapter 608 claims for unlawful deductions from wages; his claim his was misclassified as an independent contract (but those allegations may be used to support his claims under the FLSA and Chapter 608); the wrongful termination claim for being a whistleblower as it is

1 duplicative of his FLSA retaliation claim and there is no corollary claim under Chapter 608. It  
2 was further recommended that defendant Warren be dismissed with prejudice. The following  
3 claims were recommended to be dismissed with leave to amend: the FLSA failure to provide  
4 required information about pay and working conditions; the Chapter 608 claim for failure to  
5 withhold applicable state and federal taxes; the intentional infliction of emotional distress claim;  
6 the civil conspiracy claim; and the breach of the implied covenant of good faith and fair dealing.  
7 It was recommended that Plaintiff be given 30 days from the date of any order adopting the  
8 report and recommendation to file an amended complaint. (ECF No. 4.)

9 30 days later, but before District Judge Traum had ruled on the report and  
10 recommendation, Plaintiff filed an amended complaint. (ECF No. 5.)

11 District Judge Traum subsequently issued an order adopting the report and  
12 recommendation. (ECF No. 6.)

13 The court now screens the amended complaint.

## 14 II. SCREENING

### 15 A. Standard

16 “[T]he court shall dismiss the case at any time if the court determines that-- (A) the  
17 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails  
18 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a  
19 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

20 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
21 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)  
22 tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the  
23 court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668

1 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to  
2 state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the  
3 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under  
4 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*,  
5 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

6 The court must accept as true the allegations, construe the pleadings in the light most  
7 favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*,  
8 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less  
9 stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9  
10 (1980) (internal quotation marks and citation omitted).

11 A complaint must contain more than a “formulaic recitation of the elements of a cause of  
12 action,” it must contain factual allegations sufficient to “raise a right to relief above the  
13 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading  
14 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]  
15 a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a  
16 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at  
17 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

18 A dismissal should not be without leave to amend unless it is clear from the face of the  
19 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
20 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
21 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

22 ///

23 ///

1 **B. Plaintiff's Amended Complaint**

2 Plaintiff's amended complaint names Matthew Burns as well as Outdoor Lighting  
3 Perspectives (OLP) of Reno and Tahoe as defendants. Like the original complaint, Plaintiff  
4 alleges that he was hired to work as an outdoor lighting installer for OLP, and that he was  
5 mischaracterized as an independent contractor when he was actually an employee.

6 Plaintiff asserts claims for violation of the FLSA based on the alleged failure to pay him  
7 overtime for hours worked over 40 hours in a week and for firing him for complaining about and  
8 asserting his rights under the FLSA. He also asserts claims under Chapter 608 of the NRS for  
9 failing to pay him overtime for hours worked over 40 per week, failing to provide him with  
10 required meal and rest breaks, failing to pay him all wages and commissions due and owing, and  
11 failing to withhold all applicable state and federal taxes. Finally, he asserts claims for breach of  
12 contract as well as fraudulent and negligent misrepresentation.

13 The court finds Plaintiff may proceed with the claims asserted in the amended complaint  
14 for violation of the FLSA for overtime and retaliation, for violation of Chapter 608 of the NRS  
15 related to overtime and the failure to pay all wages and commissions due and owing, and for  
16 breach of contract and fraudulent and negligent misrepresentation against Burns and OLP.

17 As the court explained in the prior report and recommendation, there is no private right of  
18 action to enforce NRS 608.019 related to meal and rest breaks, but Plaintiff may allege he can  
19 recover unpaid wages related to meal and rest breaks under his claim for unpaid wages under  
20 NRS 608.135. The court will construe the amended complaint as not asserting a separate claim  
21 related to meal and rest breaks, but as including allegations to support his claim for unpaid wages  
22 related to meal and rest breaks.  
23

1 The court also previously explained that Plaintiff did not cite authority for his claim  
2 under NRS Chapter 608 for the failure to withhold applicable federal and state taxes. The  
3 amended complaint also does not appear to cite such authority. However, Plaintiff can proceed  
4 with this allegation to the extent the amended complaint is construed as alleging he is entitled to  
5 recover any amounts related to the failure to withhold taxes under his claim for unpaid wages.

6 Finally, Plaintiff's amended complaint contains an allegation that Defendants  
7 misclassified Plaintiff *and Plaintiff's brother* as independent contractors, but Plaintiff's brother is  
8 not a plaintiff in this action.

### 9 III. CONCLUSION

10 (1) Plaintiff may **PROCEED** with the claims in the amended complaint (ECF No. 5) as  
11 outlined in this Order. The amended complaint (ECF No. 5) is now the operative complaint.

12 (2) The Clerk of Court shall **ISSUE** summonses for defendants Matthew Burns and OLP,  
13 **and deliver the same**, to the U.S. Marshal for service. The Clerk also shall also **SEND** sufficient  
14 copies of the amended complaint (ECF No. 5) and this Order to the U.S. Marshal for service on  
15 the defendants. The Clerk shall **SEND** to Plaintiff **2** USM-285 forms. Plaintiff will have **21**  
16 **days** within which to furnish to the U.S. Marshal the required USM-285 forms with relevant  
17 information as to each defendant on each form at 400 S. Virginia Street, 2nd floor, Reno, Nevada  
18 89501. Within **20 days** after receiving from the U.S. Marshal a copy of the USM-285 forms  
19 showing whether service has been accomplished, if any of the defendants were not served, and if  
20 Plaintiff wants service to be attempted again, he must file a motion with the court providing a  
21 more detailed name and/or address for service, or indicating that some other method of service  
22 should be attempted.

1 (3) Plaintiff is reminded that under Federal Rule of Civil Procedure 4(m), service must be  
2 completed within **90 days** of the date of this Order. If Plaintiff requires additional time to meet  
3 any of the deadlines set by the court, he must file a motion for extension of time under Local  
4 Rule 1A 6-1 *before* the expiration of the deadline, and the motion must be supported by a  
5 showing of good cause. A motion filed after a deadline set by the court, or applicable rules, will  
6 be denied absent a showing of excusable neglect.

7 (4) The notice previously issued under Federal Rule of Civil Procedure 4(m) with respect  
8 to the original complaint (ECF No. 8) is now **MOOT** in light of this order allowing the amended  
9 complaint to proceed.

10 (5) Plaintiff shall serve upon defendant(s) or, if an appearance has been entered by  
11 counsel, upon the attorney(s), a copy of every pleading, motion or other document submitted for  
12 consideration by the court. If Plaintiff electronically files a document with the court's electronic  
13 filing system, no certificate of service is required. Fed. R. Civ. P. 5(d)(1)(B); LR IC 4-1(b); LR  
14 5-1. If Plaintiff mails the document to the court, Plaintiff shall include with the original  
15 document submitted for filing a certificate stating the date that a true and correct copy of the  
16 document was mailed to the defendants or counsel for the defendants.

17 ///

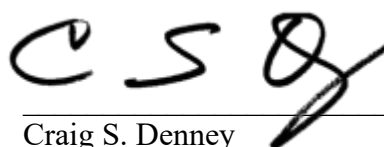
18 ///

19 ///

1 If counsel has entered a notice of appearance, Plaintiff shall direct service to the  
2 individual attorney named in the notice of appearance, at the physical or electronic address stated  
3 therein. The court may disregard any document received by a district judge or magistrate judge  
4 which has not been filed with the Clerk, and any document received by a district judge,  
5 magistrate judge, or the Clerk which fails to include a certificate showing proper service when  
6 required.

7 **IT IS SO ORDERED.**

8 Dated: July 7, 2025

9 

10 Craig S. Denney  
11 United States Magistrate Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23